

Internal Revenue Service, Treasury

§ 47.2-2

Securities Act of 1933 and was issued before August 10, 1982. See section 310(d)(3) of the Tax Equity and Fiscal Responsibility Act of 1982.

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PART 47—FLOOR STOCKS TAXES

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Sec.

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Subpart A [Reserved]

§§ 47.1-1 through 47.1-5 [Reserved]

Subpart B—Vaccine Floor Stocks Tax of 1993

§ 47.2-1 Scope of this subpart B and effective date.

The regulations in this subpart B relate to the vaccine floor stocks tax imposed by section 13421(c) of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103-66; 107 Stat. 312, 565). The tax is imposed on untaxed vaccines held at the last moment of August 10, 1993. The regulations in this subpart B describe the specific articles subject to tax, the rates of tax, and the persons liable for tax. The regulations in this subpart B also provide an exception to the tax and requirements for payment of tax and filing a return reporting the tax. The regulations in this subpart B are effective on August 10, 1993.

§ 47.2-2 Definitions relating to the vaccine floor stocks tax.

(a) *Terms used in section 4131.* For purposes of this subpart, terms that are also used in section 4131 have the same meaning as when so used.

(b) *Other terms.* For purposes of this section—

Act refers to the Omnibus Budget Reconciliation Act of 1993.

Controlled group means—

(1) Any controlled group of corporations within the meaning of section 1563(a), except that the phrase “more than 50 percent” is substituted for the phrase “at least 80 percent” each place it appears therein and a controlled group of corporations includes members that are described in section 1563(b)(2) (relating to excluded members); and

(2) Any other group of organizations, at least one member of which is not a corporation, that is a brother-sister group under common control or a combined group under common control, with terms having the following meanings for this purpose:

(i) *Organization* means a sole proprietorship, a partnership, a trust, an estate, or a corporation.

(ii) *Brother-sister group under common control* means two or more organizations if—

(A) The same five or fewer persons who are individuals, estates, or trusts own (directly and with the application of § 1.414(c)-4 of this chapter) a controlling interest of each organization;

(B) Taking into account the ownership of each person only to the extent that person's ownership is identical with respect to each organization, such persons are in effective control of each organization; and

(C) The five or fewer persons whose ownership is considered for purposes of the controlling interest requirement for each organization are the same persons whose ownership is considered for purposes of the effective control requirement.

(iii) *Controlling interest* means—

(A) In the case of a corporation, ownership of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of the shares of all classes of stock of the corporation;

(B) In the case of a trust or estate, ownership of an actuarial interest (determined under § 1.52-1(f) of this chapter) of at least 50 percent of the trust or estate;

(C) In the case of a partnership, ownership of at least 50 percent of the profit interest or capital interest of the partnership; and

(D) In the case of a sole proprietorship, ownership of the sole proprietorship.

(iv) *Effective control* has the meaning given that term in § 1.52-1(d)(3) of this chapter.

(v) *Combined group under common control* has the meaning given that term in § 1.52-1(e) of this chapter.

§ 47.2-3 Imposition of vaccine floor stocks tax.

(a) *Vaccines subject to tax.* Section 13421(c) of the Act imposes a floor stocks tax on any taxable vaccine (as defined in section 4132(a)(1) of the Internal Revenue Code)—

(1) Which was sold by the manufacturer, producer, or importer on or before August 10, 1993;

(2) On which no tax was imposed under section 4131 (or on which such tax was imposed and subsequently credited or refunded); and

(3) Which is held at the last moment of August 10, 1993, by any person for sale or use.

(b) *Rates of tax.* The rate of floor stocks tax on each taxable vaccine is the rate of tax specified in section 4131(b)(1) of the Internal Revenue Code.

(c) *Person liable for tax.* The person liable for the floor stocks tax on any vaccine subject to tax is the person that holds the vaccine at the last moment of August 10, 1993. For purposes of the floor stocks tax, a vaccine is held at the last moment of August 10, 1993, by the person that has title to the vaccine (whether or not delivery to that person has been made) at such time, as determined under applicable local law. There is no exemption from the floor stocks tax for the United States or for State or local governments. Each business unit that has, or is required to have, its own employer identification number is treated as a separate person for purposes of the floor stocks tax.

§ 47.2-4 De minimis exception to vaccine floor stocks tax.

(a) *De minimis exception*—(1) *In general.* Except as otherwise provided in this section, if the aggregate amount of floor stocks tax payable by a person does not exceed \$1,000, that person is not required to report or pay the tax.

(2) *All amounts held subject to tax if threshold exceeded.* If the aggregate amount of floor stocks tax payable by a person exceeds \$1,000, that person is required to report and pay the total amount of tax as determined without regard to this section.

(3) *Controlled groups.* A member of a controlled group (as defined in § 47.2-2) is not excepted from reporting and paying floor stocks tax under this section if the aggregate amount of floor stocks tax payable by all members of the controlled group exceeds \$1,000.

(b) *Examples.* The following examples illustrate the rules of this section:

Example 1. A holds 50 doses of DPT vaccine and 60 doses of polio vaccine on the last moment of August 10, 1993. A is not a member of a controlled group. A is not required to report and pay the floor stocks tax on any of the taxable vaccines because the aggregate amount of floor stocks tax payable by A (determined without regard to this section) does not exceed \$1,000 ((50×\$4.56 per dose of DPT vaccine) + (60×\$0.29 per dose of polio vaccine) = \$245.40).

Example 2. D, E, and F are members of the same controlled group. On the last moment of August 10, 1993, D holds 100 doses of DPT vaccine and 160 doses of polio vaccine; E holds 80 doses of DPT vaccine, 10 doses of MMR vaccine and 60 doses of polio vaccine; and F holds 20 doses of MMR vaccine and 10 doses of DT vaccine. Without regard to this section, D is liable for a tax of \$502.40 ((100×\$4.56 per dose of DPT vaccine)+(160×\$0.29 per dose of polio vaccine)); E is liable for a tax of \$426.60 ((80×\$4.56 per dose of DPT vaccine)+(10×\$4.44 per dose of MMR vaccine)+(60×\$0.29 per dose of polio vaccine)); and F is liable for a tax of \$89.40 ((20×\$4.44 per dose of MMR vaccine)+(10×\$0.06 per dose of DT vaccine)). Because the aggregate amount of floor stocks tax payable by all members of the group (\$1,018.40) exceeds \$1,000, each member of the controlled group must report and pay the floor stocks tax.

§ 47.2-5 Requirements with respect to payment and return.

(a) *Payment of tax.* The floor stocks tax is to be paid without assessment or notice on or before February 28, 1994.

(b) *Filing of return*—(1) *Form 720.* Except as provided in § 47.2-4(a) (relating to the de minimis exception), every person liable for the floor stocks tax must make a return of the tax on Form 720, Quarterly Federal Excise Tax Return. The return is to be prepared and filed in accordance with the instructions relating to the return.

(2) *Time for filing*—(i) *In general.* The Form 720 required by paragraph (b)(1) of this section must be filed on or before February 28, 1994, and is a return for the fourth calendar quarter of 1993. A first return reporting only floor stocks tax is also a final return and therefore, in accordance with the instructions to Form 720, the box for “final return” must be marked.

(ii) *Return reporting other taxes.* A person must file only one Form 720 for a quarter. If a person is required under part 40 of this chapter to file Form 720 for the fourth calendar quarter of 1993 for other excise taxes earlier than Feb-

ruary 28, 1994, that person files a single Form 720 for the quarter by February 28, 1994. This paragraph (b)(2)(ii) does not extend the time for making deposits or paying any excise tax.

Subpart C—Fuel Floor Stocks Taxes Under the Omnibus Budget Reconciliation Act of 1993

§ 47.3-1 Scope of this subpart C and effective date.

The regulations in this subpart C relate to the fuel floor stocks taxes imposed by sections 13241(h), 13243, and 13245 of the Omnibus Budget Reconciliation Act of 1993 (Act). The tax under section 13241(h) of the Act is imposed on previously taxed gasoline, diesel fuel, and aviation fuel held by any person at the first moment of October 1, 1993 (the October 1, 1993, floor stocks tax). The tax under section 13243 of the Act is imposed on untaxed diesel fuel that does not satisfy the requirements of section 4082 (as amended by section 13242 of the Act) and that is held by any person at the first moment of January 1, 1994, at a point in the distribution chain outside the bulk transfer/terminal system (the January 1, 1994, floor stocks tax). The tax under section 13245 of the Act is imposed on commercial aviation fuel on which tax was imposed under section 4091 (even if only at the Leaking Underground Storage Tank Trust Fund financing rate) before October 1, 1995, and that is held by any person at the first moment of October 1, 1995 (the October 1, 1995, floor stocks tax). The regulations in this subpart describe the specific fuels subject to tax, the rates of tax, and the persons liable for tax. The regulations in this subpart also provide exceptions to tax and requirements for payment of tax and filing a return reporting tax. This subpart is effective on October 1, 1993.

§ 47.3-2 Definitions relating to the floor stocks taxes under this subpart C.

Act is the Omnibus Budget Reconciliation Act of 1993.

Aviation fuel is any liquid (other than any product taxable under section 4081) that is commonly or commercially

known or sold as a fuel that is suitable for use in an aircraft.

Commercial aviation fuel is any aviation fuel that is held for use or sale for use in a business of transporting persons or property for compensation or hire by air.

Controlled group means—

(1) Any controlled group of corporations within the meaning of section 1563(a), except that the phrase “more than 50 percent” is substituted for the phrase “at least 80 percent” each place it appears therein and a controlled group of corporations includes members that are described in section 1563(b)(2) (relating to excluded members); and

(2) Any other group of organizations, at least one member of which is not a corporation, that is a brother-sister group under common control or a combined group under common control, with terms having the following meanings for this purpose:

(i) *Organization* means a sole proprietorship, a partnership, a trust, an estate, or a corporation.

(ii) *Brother-sister group under common control* means two or more organizations if—

(A) The same five or fewer persons who are individuals, estates, or trusts own (directly and with the application of § 1.414(c)-4 of this chapter) a controlling interest of each organization;

(B) Taking into account the ownership of each person only to the extent that person's ownership is identical with respect to each organization, such persons are in effective control of each organization; and

(C) The five or fewer persons whose ownership is considered for purposes of the controlling interest requirement for each organization are the same persons whose ownership is considered for purposes of the effective control requirement.

(iii) *Controlling interest* means—

(A) In the case of a corporation, ownership of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of the shares of all classes of stock of the corporation;

(B) In the case of a trust or estate, ownership of an actuarial interest (de-

termined under § 1.52-1(f) of this chapter) of at least 50 percent of the trust or estate;

(C) In the case of a partnership, ownership of at least 50 percent of the profit interest or capital interest of the partnership; and

(D) In the case of a sole proprietorship, ownership of the sole proprietorship.

(iv) *Effective control* has the meaning given that term in § 1.52-1(d)(3) of this chapter.

(v) *Combined group under common control* has the meaning given that term in § 1.52-1(e) of this chapter.

Diesel fuel means any liquid (other than gasoline) that is suitable for use in a diesel-powered highway vehicle, diesel-powered train, or, after December 31, 1993, diesel-powered boat.

Fuel means gasoline, diesel fuel, and aviation fuel (including after September 30, 1995, commercial aviation fuel).

Gasoline means—

(1) All products (including gasohol) that are commonly or commercially known or sold as gasoline and are suitable for use as a motor fuel (other than products that are not sold as gasoline and have an American Society for Testing Materials octane number of less than 75 as determined by the motor method); and

(2) Gasoline blend stocks (as defined in § 48.4081-1(j) of this chapter).

Person includes each business unit that has, or is required to have, its own employer identification number.

§ 47.3-3 Imposition of the October 1, 1993, floor stocks tax on fuel held on October 1, 1993.

(a) *Fuels subject to tax.* Section 13241(h)(1) of the Act imposes a floor stocks tax on gasoline (including gasohol), diesel fuel, and aviation fuel—

(1) On which tax was imposed under section 4081 or 4091 before October 1, 1993; and

(2) That is held at the first moment of October 1, 1993, by any person.

(b) *Rate of tax.* The rate of the October 1, 1993, floor stocks tax is 4.3 cents per gallon.

(c) *Person liable for tax.* The person liable for tax on any fuel subject to the October 1, 1993, floor stocks tax is the person that holds the fuel at the first

moment of October 1, 1993. Fuel is held by a person if the person has title to the fuel (whether or not delivery to that person has been made) at such time, as determined under applicable local law.

§ 47.3-4 Exceptions to the October 1, 1993, floor stocks tax.

(a) *Exception for fuel held for an exempt use—(1) Gasoline.* The October 1, 1993, floor stocks tax does not apply to gasoline held exclusively for an exempt use. In determining whether gasoline is held exclusively for an exempt use, the following rules in paragraphs (a)(1) (i) through (iii) of this section apply:

(i) An exempt use, with respect to gasoline, is any use of gasoline (other than use in producing gasohol) that is described in section 6420, 6421, or 6427 and that entitles the ultimate purchaser to a credit or payment equal to the tax imposed by section 4081. Thus, for example, exempt use of gasoline includes use on a farm for farming purposes; use in an off-highway business use; use in certain intercity, local, and school buses; exclusive use by a State or local government or nonprofit educational organization; and use in commercial aircraft.

(ii) Gasoline is held exclusively for an exempt use only if the person that holds gasoline at the first moment of October 1, 1993, actually uses the gasoline in an exempt use.

(iii) Gasoline is not held exclusively for an exempt use if, at the first moment of October 1, 1993, the gasoline is held for resale (including resale to a person that will use the gasoline in an exempt use). Thus, for example, gasoline held by a gasoline service station for sale to a farmer for use on a farm for farming purposes is not exempt from the October 1, 1993, floor stocks tax. However, the farmer would be eligible to claim an income tax credit for an amount equal to the tax under sections 34 and 6420.

(2) *Diesel fuel.* The October 1, 1993, floor stocks tax does not apply to diesel fuel held exclusively for an exempt use. In determining whether diesel fuel is held exclusively for an exempt use, the following rules in paragraphs (a)(2) (i) through (iv) of this section apply:

(i) An exempt use, with respect to diesel fuel, is any use of diesel fuel (other than use in producing a diesel fuel/alcohol mixture or as fuel in a diesel-powered train) that is described in section 6427 and that entitles the ultimate purchaser to a credit or payment equal to the tax imposed by section 4091. Thus, for example, exempt uses of diesel fuel include use other than as a fuel in a diesel-powered highway vehicle (as defined in § 48.4041-8(b)(4) of this chapter), use on a farm for farming purposes, exclusive use by a State or local government or nonprofit educational organization, and use in an off-highway business use.

(ii) Diesel fuel held for use in a diesel-powered train is not exempt from the October 1, 1993, floor stocks tax under this paragraph (a)(2) unless the fuel is held by a State or local government. Thus, the exemptions for use other than as fuel in a diesel-powered highway vehicle and off-highway business use do not apply to fuel used in a diesel-powered train. See section 6427(l)(3) as amended by section 13241 of the Act.

(iii) Diesel fuel is held exclusively for an exempt use only if the person that holds the fuel at the first moment of October 1, 1993, actually uses the diesel fuel in an exempt use.

(iv) Diesel fuel is not held exclusively for an exempt use if, at the first moment of October 1, 1993, the diesel fuel is held for resale (including resale to a person that will use the diesel fuel in an exempt use). Thus, for example, diesel fuel held by a retailer for sale to a construction company for use in the construction company's off-road machinery is not exempt from the October 1, 1993, floor stocks tax. However, the construction company would be eligible to claim a credit or payment equal to the tax under section 6427.

(3) *Aviation fuel.* The October 1, 1993, floor stocks tax does not apply to aviation fuel held exclusively for an exempt use. In determining whether aviation fuel is held exclusively for an exempt use, the following rules in paragraphs (a)(3) (i) through (iii) of this section apply:

(i) An exempt use, with respect to aviation fuel, is any use of aviation fuel that is described in section 6427

and that entitles the ultimate purchaser to a credit or payment equal to the tax imposed by section 4091. Thus, for example, exempt use of aviation fuel includes any use on a farm for farming purposes, exclusive use by a State or local government or nonprofit educational organization, and use other than use as a fuel in an aircraft in noncommercial aviation (as defined in section 4041(c)).

(ii) Aviation fuel is held exclusively for an exempt use only if the person that holds the aviation fuel at the first moment of October 1, 1993, actually uses the aviation fuel in an exempt use.

(iii) Aviation fuel is not held exclusively for an exempt use if, at the first moment of October 1, 1993, the aviation fuel is held for resale (including resale to a person that will use the aviation fuel in an exempt use). Thus, for example, aviation fuel held by a fixed-base operator for sale to an airline for use in commercial aviation is not exempt from the October 1, 1993, floor stocks tax. However, the airline would be eligible to claim a credit or payment equal to the tax under section 6427.

(b) *Exception for gasoline or diesel fuel held in vehicle fuel supply tank.* The October 1, 1993, floor stocks tax does not apply to gasoline or diesel fuel held at the first moment of October 1, 1993, in the fuel supply tank of a motor vehicle (as defined in § 48.4041-8(c) of this chapter) or motorboat. This exception does not apply to fuel held in the fuel supply tank of a train or an aircraft.

(c) *Exception for certain amounts of fuel—(1) In general.* The October 1, 1993, floor stocks tax does not apply to—

(i) Gasoline that a person holds at the first moment of October 1, 1993, if the aggregate amount of gasoline held by that person at that moment does not exceed 4,000 gallons; and

(ii) Diesel fuel or aviation fuel that a person holds at the first moment of October 1, 1993, if the aggregate amount of diesel fuel or the aggregate amount of aviation fuel held by that person at that moment does not exceed 2,000 gallons.

(2) *Additional rules—(i) Coordination with other exemptions.* In determining the aggregate amount of gasoline, diesel fuel, or aviation fuel held by a person at the first moment of October 1,

1993, there is excluded the amount of gasoline, diesel fuel, or aviation fuel exempt from the October 1, 1993, floor stocks tax by reason of paragraph (a) of this section (relating to fuel held for exempt uses), or paragraph (b) of this section (relating to gasoline and diesel fuel held in the fuel supply tank of a motor vehicle or motorboat).

(ii) *All amounts held subject to tax if threshold exceeded.* The October 1, 1993, floor stocks tax applies to all amounts of gasoline, diesel fuel, or aviation fuel (as the case may be) held by a person (and not exempt from tax under paragraph (a) or (b) of this section) if the aggregate amount of fuel held by the person at the first moment of October 1, 1993, exceeds 4,000 gallons in the case of gasoline or 2,000 gallons in the case of diesel fuel or aviation fuel.

(iii) *Controlled groups.* A member of a controlled group (as defined in § 47.3-2) holds more than 4,000 gallons of gasoline if the aggregate amount of all gasoline held by all members of the controlled group exceeds 4,000 gallons. A member of a controlled group holds more than 2,000 gallons of diesel fuel or aviation fuel if the aggregate amount of all diesel fuel or aviation fuel, as the case may be, held by all members of the controlled group exceeds 2,000 gallons.

(3) *Examples.* The following examples illustrate the rules of this section:

Example 1. On October 1, 1993, A holds 10,000 gallons of gasoline, 6,000 gallons of which are held exclusively for use on a farm for farming purposes. The remaining 4,000 gallons are held for use in A's highway vehicles. A is not a member of a controlled group. A is not liable for the floor stocks tax on any of the 10,000 gallons because the aggregate amount of fuel held by A for uses other than exempt uses does not exceed 4,000 gallons.

Example 2. On October 1, 1993, B holds 1,900 gallons of diesel fuel and 3,900 gallons of gasoline. B is not a member of a controlled group. B is not liable for the floor stocks tax on diesel fuel because B's holdings of diesel fuel do not exceed 2,000 gallons. B is not liable for the floor stocks tax on gasoline because B's holdings of gasoline do not exceed 4,000 gallons.

Example 3. On October 1, 1993, C holds 4,100 gallons of gasoline for resale at a service station. C is liable for a floor stocks tax of \$176.30 (4,100 X \$.043) on that gasoline.

§ 47.3-5 Requirements with respect to payment and return for the October 1, 1993, floor stocks tax.

(a) *Payment of tax.* The October 1, 1993, floor stocks tax is to be paid without assessment or notice on or before November 30, 1993.

(b) *Filing of returns—(1) Form 720.* Every person liable for the October 1, 1993, floor stocks tax must make a return of the tax on Form 720, Quarterly Federal Excise Tax Return. The return is to be prepared and filed in accordance with the instructions relating to the return.

(2) *Time for filing—(i) In general.* The Form 720 required by paragraph (b)(1) of this section must be filed on or before November 30, 1993, and is a return for the third calendar quarter of 1993. A first return reporting only the October 1, 1993, floor stocks tax is also a final return and therefore, in accordance with the instructions to Form 720, the box for “final return” must be marked.

(ii) *Return reporting other taxes.* A person must file only one Form 720 for a quarter. If a person is required under part 40 of this chapter to file Form 720 for the third calendar quarter of 1993 for other excise taxes earlier than November 30, 1993, that person files a single Form 720 for the quarter on or before November 30, 1993. This paragraph (b)(2)(ii) does not extend the time for making deposits or paying any excise tax.

§ 47.3-6 Imposition of the January 1, 1994, floor stocks tax on diesel fuel held on January 1, 1994.

(a) *Fuel subject to tax.* Section 13243 of the Act imposes a floor stocks tax on diesel fuel held at the first moment of January 1, 1994, by any person if—

(1) No tax was imposed on the diesel fuel under section 4041(a) or 4091 as in effect on December 31, 1993; and

(2) Tax would have been imposed by section 4081, as amended by section 13242 of the Act, on any prior removal, entry, or sale of the diesel fuel had section 4081 applied to the diesel fuel for periods before January 1, 1994.

(b) *Rate of tax.* The rate of the January 1, 1994, floor stocks tax is 24.4 cents per gallon.

(c) *Person liable for tax.* The person liable for tax on any diesel fuel subject

to the January 1, 1994, floor stocks tax is the wholesale distributor or other registered producer, recreational boat operator, or other person that holds the fuel at the first moment of January 1, 1994. Fuel is held by a person if the person has title to the fuel (whether or not delivery to that person has been made) at such time, as determined under applicable local law.

§ 47.3-7 Exception to the January 1, 1994, floor stocks tax.

(a) *In general.* The January 1, 1994, floor stocks tax does not apply to diesel fuel held exclusively for an exempt use. In determining whether diesel fuel is held exclusively for an exempt use, the following rules apply:

(1) An exempt use, with respect to diesel fuel, is any use of diesel fuel (other than in producing a diesel fuel/alcohol mixture or as fuel in a diesel-powered train) that is described in section 6427 (as in effect on January 1, 1994) and that would entitle the ultimate purchaser to a credit or payment equal to any tax imposed by section 4081 (as in effect on such date). Thus, for example, exempt uses of diesel fuel include use other than as a fuel in a diesel-powered highway vehicle (as defined in § 48.4041-8(b)(4) of this chapter), use on a farm for farming purposes, exclusive use by a State or local government or nonprofit educational organization, and use in an off-highway business use.

(2) Diesel fuel held for use in a diesel-powered train is not exempt from the January 1, 1994, floor stocks tax under paragraph (a)(1) of this section unless the fuel is held by a State or local government. Thus, the exemptions for use other than as fuel in a diesel-powered highway vehicle and off-highway business use do not apply to fuel used in a diesel-powered train. For circumstances in which diesel fuel held for use in a diesel-powered train may be exempt from the January 1, 1994, floor stocks tax, see paragraph (b) of this section (relating to the exemption for dyed fuel) and § 47.3-6(a)(1), which exempts fuel that was previously taxed under section 4041(a) or 4091 (as in effect on December 31, 1993).

(3) Diesel fuel is held exclusively for an exempt use only if the person that

holds the fuel at the first moment of January 1, 1994, actually uses the diesel fuel in an exempt use.

(4) Diesel fuel is not held exclusively for an exempt use if, at the first moment of January 1, 1994, the diesel fuel is held for resale (including resale to a person that will use the diesel fuel in an exempt use). Thus, for example, except in the case of dyed fuel described in paragraph (b) of this section, diesel fuel held by a heating oil retailer for sale for use as home heating oil is not exempt from the January 1, 1994, floor stocks tax. However, a homeowner who uses the fuel for heating purposes would be eligible to claim a credit or may be eligible for a payment equal to the tax under section 6427.

(b) *Exception for dyed fuel.* The January 1, 1994, floor stocks tax does not apply to diesel fuel that satisfies the dyeing requirements of § 48.4082-1T(b) of this chapter by March 31, 1994, or by the time the fuel is sold by the person holding the fuel at the first moment of January 1, 1994, whichever is earlier. Thus, for example, diesel fuel held by a heating oil retailer for sale for use as home heating oil is exempt from the January 1, 1994, floor stocks tax if the retailer or another person has dyed the fuel and the fuel satisfies the requirements of § 48.4082-1T(b) of this chapter.

§ 47.3-8 Requirements with respect to payment and return for the January 1, 1994, floor stocks tax.

(a) *Payment of tax.* The January 1, 1994, floor stocks tax is to be paid without assessment or notice on or before July 31, 1994.

(b) *Filing of returns—(1) Form 720.* Every person liable for the January 1, 1994, floor stocks tax must make a return of the tax on Form 720, Quarterly Federal Excise Tax Return. The return is to be prepared and filed in accordance with the instructions relating to the return.

(2) *Time for filing—(i) In general.* The Form 720 required by paragraph (b)(1) of this section must be filed on or before July 31, 1994, and is a return for the second calendar quarter of 1994. A first return reporting only January 1, 1994, floor stocks tax is also a final return and therefore, in accordance with

the instructions to Form 720, the box for “final return” must be marked.

(ii) *Return reporting other taxes.* A person must file only one Form 720 for a quarter. If a person is required under part 40 of this chapter to file Form 720 for the second calendar quarter of 1994 for other excise taxes on or before August 31, 1994, that person files a single Form 720 for the quarter on or before August 31, 1994. This paragraph (b)(2)(ii) does not extend the time for making deposits or paying any excise tax.

§ 47.3-9 Imposition of the October 1, 1995, floor stocks tax on commercial aviation fuel held on October 1, 1995.

(a) *Fuel subject to tax.* Section 13245 of the Act imposes a floor stocks tax on commercial aviation fuel on which tax was imposed under section 4091 before October 1, 1995, and which is held on the first moment of that date by any person. Tax is imposed under section 4091 even if imposed only at the Leaking Underground Storage Tank Trust Fund financing rate under that section.

(b) *Rate of tax.* The rate of the October 1, 1995, floor stocks tax is 4.3 cents per gallon.

(c) *Person liable for tax.* The person liable for tax on any commercial aviation fuel subject to the October 1, 1995, floor stocks tax is the person that holds the commercial aviation fuel at the first moment of October 1, 1995. Fuel is held by a person if the person has title to the fuel (whether or not delivery to that person has been made) at such time, as determined under applicable local law.

§ 47.3-10 Exceptions to the October 1, 1995, floor stocks tax.

(a) *Exception for commercial aviation fuel held for use as supplies for vessels or aircraft.* The October 1, 1995, floor stocks tax does not apply to commercial aviation fuel held exclusively for use as supplies for vessels or aircraft within the meaning of section 4221(d)(3). In determining whether commercial aviation fuel is held exclusively for such use, the following rules in paragraphs (a) (1) and (2) of this section apply:

(1) Commercial aviation fuel is held exclusively for use as supplies for vessels or aircraft only if the person that holds the commercial aviation fuel at the first moment of October 1, 1995, actually uses the aviation fuel in that exempt use.

(2) Commercial aviation fuel is not held exclusively for use as supplies for vessels or aircraft if, at the first moment of October 1, 1995, the commercial aviation fuel is held for resale (including resale to a person that will use the aviation fuel as supplies for vessels or aircraft). Thus, for example, commercial aviation fuel held by a fixed base operator for sale to an airline for use in foreign trade is not exempt from the October 1, 1995, floor stocks tax. However, the airline would be eligible to claim a credit or payment equal to the tax under section 6427.

(b) *Exception for certain amounts of fuel*—(1) *In general.* The October 1, 1995, floor stocks tax does not apply to commercial aviation fuel that a person holds at the first moment of October 1, 1995, if the aggregate amount of commercial aviation fuel held by that person at that moment does not exceed 2,000 gallons.

(2) *Additional rules relating to the 2,000 gallon exception*—(i) *Coordination with other exemptions.* In determining the aggregate amount of commercial aviation fuel held by a person at the first moment of October 1, 1995, there is to be excluded the amount of commercial aviation fuel exempt from the October 1, 1995, floor stocks tax by reason of paragraph (a) of this section (relating to fuel held for an exempt use).

(ii) *All amounts held subject to tax if threshold exceeded.* The October 1, 1995, floor stocks tax applies to all amounts of commercial aviation fuel held by a person (and not exempt from tax under paragraph (a) of this section) if the aggregate amount of commercial aviation fuel held by the person at the first moment of October 1, 1995, exceeds 2,000 gallons.

(iii) *Controlled groups.* A member of a controlled group (as defined in §47.3-2) holds more than 2,000 gallons of commercial aviation fuel if the aggregate amount of all commercial aviation fuel held by all members of the controlled group exceeds 2,000 gallons.

(3) *Example.* The following example illustrates the rules of this paragraph (b):

Example. D, E, and F are members of the same controlled group. On October 1, 1995, D holds 2,000 gallons of commercial aviation fuel. E holds 1,500 gallons of commercial aviation fuel, and F holds 500 gallons of commercial aviation fuel. None of the commercial aviation fuel is held for an exempt use. Because the aggregate amount held by all members of the group is 4,000 gallons, which exceeds 2,000 gallons, all commercial aviation fuel held by each member is subject to the floor stocks tax. Thus, D is liable for tax of \$86.00 ($2,000 \times \0.043), E is liable for tax of \$64.50 ($1,500 \times \0.043), and F is liable for tax of \$21.50 ($500 \times \0.043).

§47.3-11 Requirements with respect to payment and return for the October 1, 1995, floor stocks tax.

(a) *Payment of tax.* The October 1, 1995, floor stocks tax is to be paid without assessment or notice on or before April 30, 1996.

(b) *Filing of returns*—(1) *Form 720.* Every person liable for the October 1, 1995, floor stocks tax must make a return of the tax on Form 720, Quarterly Federal Excise Tax Return. The return is to be prepared and filed in accordance with the instructions relating to the return.

(2) *Time for filing*—(i) *In general.* The Form 720 required by paragraph (b)(1) of this section must be filed on or before April 30, 1996, and is a return for the first calendar quarter of 1996. A first return reporting only October 1, 1995, floor stocks tax is also a final return and therefore, in accordance with the instructions to Form 720, the box for “final return” must be marked.

(ii) *Return reporting other taxes.* A person must file only one Form 720 for a quarter. If a person is required under part 40 of this chapter to file Form 720 for the first calendar quarter of 1996 for other excise taxes on or before May 31, 1996, that person files a single Form 720 for the quarter on or before May 31, 1996. This paragraph (b)(2)(ii) does not extend the time for making deposits or paying any excise tax.

PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES